

### **REMARKS / DISCUSSION OF ISSUES**

Claims 1, 3 – 7 and 9 – 11 are pending in the application. Claims 1, 7 and 11 are independent.

In the present response, the claims are not amended.

#### **35 U.S.C. 102**

The Office Action rejects claims 1, 3, 6, 7 and 9 under 35 U.S.C. 102(b) over Kim et al. (US 2003/0087645 A1, hereinafter "Kim").

Applicant submits that for at least the following reasons, claims 1, 3, 6, 7 and 9 are patentable over Kim.

For example, claim 1, in part, requires:

*"wherein the first access point is adapted to determine whether there is a first free channel and a second free channel; and wherein, in case there are first and second free channels, the first access point is adapted to control a setting of the first and second communication channels on the basis of the first and second free channels."* (Emphases added)

In the Office Action, page 4, the Office alleges that Kim, paragraph [0059], discloses the above claimed features. Applicant respectfully traverses.

Kim, paragraph [0059], discloses the process for channel assignment so as to minimize the effective utilization of the bottleneck AP. During the process, each "available" channel is assessed to compute the effective channel utilization. However, Applicant submits that Kim's "available" channels are not "free" channels, but rather are channels available for allocation (see, Kim, paragraph [0051]). Furthermore, Kim, in paragraph [0051], states that an effective channel utilization  $U_i$  is defined as the fraction of time at which the channel can be sensed busy or is used for transmission by AP<sub>i</sub>. If the channel is sensed busy or is being used for transmission, such channel cannot be regarded as a free channel. The process disclosed by Kim assesses whether each channel is available for allocation and determines its traffic loads in order to compute

the effective channel utilization. Kim's teaching of determining the traffic loads for each of the channels available for allocation clearly suggests that the channels are not necessarily free, and therefore, Kim does not disclose determining whether there is a first free channel and a second free channel, as claimed.

Furthermore, Kim, paragraph [0058], discloses that the channel assignment process is to obtain the objective function:  $\text{minimize max } \{U_1, U_2, \dots, U_m\}$  (Eq. 5)

The process involves re-computing the effective channel utilization for new channel assignments until such objective function is obtained (Fig. 4, paragraph [0059]). As discussed above, the channels available for allocation are not free channels, thus, the final channel assignment in Kim does not necessarily derive from the free channels. Therefore, Kim does not disclose the first access point is adapted to control a setting of the first and second communication channels on the basis of the first and second free channels, if there are first and second free channels.

In view of at least the foregoing, Applicant submits that claim 1 is patentable over Kim.

Similarly, independent claim 7, in part, requires:

*"wherein the first access point is further adapted to determine whether there is a first free channel; and*

*wherein, in case there is the first free channel, the first access point is further adapted to control a setting of the first communication channel on the basis of the first free channel."*

Although claim 7 is different from and should be interpreted independently of claim 1, claim 7 contains many similar distinguishing features as in claim 1. Applicants essentially repeat the above arguments for claim 1, and apply them to claim 7, pointing out why Kim fails to disclose the above claimed features. Therefore, claim 7 is patentable over Kim.

Dependent claims 3, 6 and 9 respectively depend from and inherit all the features of either claim 1 or 7. Thus claims 3, 6 and 9 are patentable for at least the reason that they respectively depend from either claim 1 or 7, with each claim containing further distinguishing features.

Withdrawal of the rejection of claims 1, 3, 6, 7 and 9 under 35 U.S.C. 102(b) is respectfully requested.

### **35 U.S.C. 103**

Under 35 U.S.C. §103(a), the Office rejects claim 11 over Jaszewski et al. (US 5,933,420, hereinafter "Jaszewski") in view of Kim.

Claim 11, in part, requires:

*"determining whether there is a first free channel;*

*controlling a setting of the first communication channel on the basis of the first free channel in case there is the first free channel."* (Emphases added)

Claim 11 is different from claim 1 and is to be interpreted independently. However, Applicant essentially repeats the above arguments for claim 1 and applies them to claim 11, pointing out why Kim fails to disclose the determination of a free channel, or the use of a free channel as a basis for controlling the setting of a channel.

In the Office Action, page 7, the Office concedes that Jaszewski does not teach or suggest determining for a free channel. Thus, the combination of Jaszewski and Kim does not teach or suggest the above claimed features as recited in claim 11.

Withdrawal of the rejection of claim 11 under 35 U.S.C. §103(a) is respectfully requested.

### **Claim Objection**

Claims 4, 5 and 10 are objected to as being dependent upon a rejected based claim.

Applicant submits that as discussed above, independent claims 1 and 7 are patentable and therefore, claims 4, 5 and 10 are allowable because they depend from an allowable base claim.

Withdrawal of the objection to claims 4, 5 and 10 is respectfully requested.

### **Conclusion**

In view of the foregoing, Applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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